On behalf of: Respondent
Witness: Adam Samuel Edward Speker KC
No. of Witness Statement: First
Exhibit: ASES1
6 November 2024

Case No. 12612-2024

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)
B E T W E E N:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

ASHLEY SIMON HURST

Respondent

WITNESS STATEMENT OF
ADAM SAMUEL EDWARD SPEKER KC

I, ADAM SAMUEL EDWARD SPEKER KC OF 5 GRAY'S INN SQUARE, LONDON, WC1R 5AH WILL SAY AS FOLLOWS:

1. INTRODUCTION

1.1 I am a practising barrister at 5RB chambers.

1.2 I have been asked by the Respondent to make this statement to set out my experiences of various customs and practices in relation to defamation matters.

1.3 Unless I state otherwise, the facts in this statement are within my knowledge and true. Where the facts are not within my knowledge, they are true to the best of my knowledge and belief, and I identify the source.

1.4 I refer to a paginated bundle of documents which are exhibited to this witness statement and marked Exhibit ASES1. The exhibit comprises true copies of the documents referred to in this witness statement. I refer to the pages of Exhibit ASES1 in the format **ASES1/[]**.

1.5 I am acquainted with the Respondent and have occasionally spoken to him for example at conferences. I cannot recall being instructed by or working with him.

2. BACKGROUND

2.1 I was called to the Bar by the Honourable Society of the Middle Temple in October 1999. At the same time I started pupillage at what was then 5 Raymond Buildings (now 5RB). I then did a second six-month pupillage at QEB Hollis Whiteman Chambers before returning to become a tenant at 5RB in October 2000 where I have remained ever since.

2.2 My expertise lies in all aspects of media and communications law including defamation, privacy, breach of confidence, harassment and data protection.

2.3 I took silk in 2020 and was elected a Bencher of the Middle Temple in 2023. I was a Contributing Editor to the Tenth, Eleventh and Twelfth editions of *Gatley on Libel & Slander* published by Sweet & Maxwell. I am the joint editor of the forthcoming fourth edition of *The Law of Privacy and the Media* published by Oxford University Press having contributed to the first three editions.

3. MY PRACTICE

3.1 Across my areas of specialism, I have a very varied practice. For example, over the past nine months my case load has included:

3.1.1 being instructed for the defendant, Nick Hargrave, in libel proceedings brought by the Davidoff family in respect of a social media post and comment under an online article. The claim was discontinued after service of a defence;

3.1.2 being instructed for a local authority (instructed in-house) on harassment of its staff by a local resident posting offensive and abusive content, and documents disclosed in private family proceedings, on the social media site X;

3.1.3 being instructed on behalf of a number of well-known figures in separate cases concerned with articles proposed to be published in national media outlets;

3.1.4 advising on a data protection complaint against a provider of information for due diligence;

3.1.5 being instructed for the defendant and appellant, Geo TV Limited in a case brought by Salman Iqbal. I am instructed on an appeal in the Court of Appeal on 5 November 2024 on the proper scope of the statutory qualified privilege defence under s15, Defamation Act 1996 (as amended);

3.1.6 being instructed for the actor and producer Noel Clarke in libel and data protection proceedings against The Guardian including on a trial of a preliminary issue; and

3.1.7 being instructed for the financier Crispin Odey in his defamation action against The Financial Times.

3.2 As can be seen from the above list of cases, I have represented and continue to represent both claimants and defendants in defamation claims, and I would estimate that the divide has been broadly split in half over the years with more claims for claimants in recent years.

4. CONFIDENTIALITY IN DEFAMATION LETTERS

4.1 As emphasised above, the defamation cases I have worked on are highly varied. However, there are a number of customs and practices that have grown up. Some of these are reflected in the defamation, now media and communications, pre-action protocol, and in CPR Part 53. Others are less formalised.

4.2 It has been a requirement for as long as I have been in practice to send a letter of claim prior to issuing proceedings. Before the SLAPP debate and the Solicitors Regulatory Authority began to take an interest in how pre-action correspondence is headed, I would say it was very often the case that pre-action letters sent by solicitors acting for claimants in defamation claims were marked "Confidential" or "Not for publication" or both.

4.3 I refer to the following extracts from textbooks which confirm this practice:

4.3.1 An extract from Gatley on Libel & Slander (of which, as stated above, I am a Contributing Editor) which states:

"if there is a risk that [the letter of claim] may be published, it should be headed "Private and confidential - Not for publication"." **ASES1/[4]**; and

4.3.2 An extract from Defamation: Law, Practice and Procedure Fourth Edition by David Price LLB, Korieh Duodu and Nicola Cain LLM which sets out as an example of a letter of claim which is endorsed "*Not for publication*" **ASES1/[12]**.

4.4 For the purposes of preparing this statement, I have also gone back to some defamation cases where I have been instructed and looked at the letters of claim sent in order to check whether my memory is correct and can confirm that that is so. I do not have permission to identify the cases but consider that I can say the following:

4.4.1 I was instructed on behalf of defendants in 2017 to defend a defamation claim in respect of something said on a television programme. The letter of claim sent on behalf of the claimant stated that it was '*strictly private & confidential to be opened by the addressee only*' and '*not for publication*.' It also demanded a response in 7 days (half the period recommended in the pre-action protocol) because of, it said, the seriousness of the matters complained of. There was no private information in the letter.

4.4.2 I was instructed on behalf of a claimant in 2018 after pre-action correspondence had been exchanged to advise whether to bring a defamation claim. The letter of claim was marked, '*Strictly Private & confidential – Not for publication*.' There was no private information in the letter.

4.4.3 I was instructed on behalf of a claimant in 2018 who was the subject of anonymous websites set up by, as later discovered, the defendant, a business rival, on which highly defamatory statements were made and some confidential documents were published. The letter of claim complained in defamation, breach of confidence, data protection and harassment and was marked, '*private and confidential; addressee only*'. Also, it stated '*Not for publication*'. At the end, it said that, '*finally, please note that this letter is marked 'not for publication'. Neither the letter nor its contents should be shared with third parties, save for legal advisers. If this request is ignored, it will be raised with the court on the issue of aggravated damages and costs*.'

4.4.4 I was instructed on behalf of a claimant in 2020 in respect of defamatory articles published by a media organisation. The letter of claim was marked '*private and confidential*.'

4.5 On the other hand, this is not the invariable practice. I was instructed on behalf of a claimant in 2017 in a defamation claim against a national newspaper. Looking back at the letter of claim I could see that it was not marked with any restriction.

4.6 As I have said, with reference to the cases identified in sub-paragraphs 4.4.1 to 4.4.4 above, I do not believe that the use of these terms has been limited to cases where the contents of the correspondence is inherently confidential. The terms have been commonly used for many years. It is also very often the case that such letters would advise a defendant to seek legal advice. I consider that the practice of marking such letters 'private and confidential' or 'not for publication' likely grew up because of a concern that the correspondence would be published. The party to whom a complaint is being made has already published information, often to the world at large, and often for commercial reasons. A complainant generally wants

their complaint resolved, not for it to become a further news story. The fear that this might happen is as explained in the passage from Gatley referred to in paragraph 4.3.1 above.

4.7 Hence, I consider there is good reason why the practice grew up but it may have become embedded through the use of precedents with, in many, but not all, cases, little consideration being given as to whether any letter should be marked in a particular way and why. In any event, whether justified in all cases or not, it was plainly a very common practice.

4.8 Based on the cases I have worked on over the years, even if a complainant had a valid or understandable fear, as explained above, that a letter might be published, an assertion of confidentiality in defamation correspondence tends to be respected, particularly by media organisations. It is, in my experience, unusual for the fact of the complaint and even more unusual for the contents of the correspondence to be made public. I believe that there is good reason for this on the part of a defendant. Media organisations do not, in my experience, generally want to tell readers that they have published matter which is untrue. Hence, there is usually no interest for them to reveal, as part of a news story, that a legal complaint has been made objecting to something they have written.

4.9 In the online world, the position is more uncertain. This is because everyone now has the means to publish to the world at large through social media platforms without any editorial checks or anyone questioning whether to publish something is a good idea. Hence, if a complaint is made against someone posting material online, one must recognise that there is a risk that they will post anything sent to them on the Internet. In my experience, this tends to be more of a problem with litigants acting in person who are in dispute with local authorities, for instance. I can think of examples where individuals, not only post defamatory and harassing information about employees but then, when a complaint is made, publish the complaint and also turn on the lawyers. Some also post documents from court cases.

5. WITHOUT PREJUDICE IN DEFAMATION

5.1 It is common in my experience, early in a defamation complaint, that, if there is a possibility of settlement, solicitors for both sides will seek to have without prejudice discussions. I believe the reasons for this are most conveniently set out in the words of Lady Justice Sharp in the Court of Appeal in *Mionis v Democratic Press SA & Ors* [2017] EWCA Civ 1194 (where I was junior counsel for the Respondents):

> *"88. There were obvious advantages to both sides to this litigation, in reaching a settlement, as there are for litigants more generally. As Lord Bingham of Cornhill put it:*

> *"The law loves a compromise. It has good reason to do so, since a settlement agreement freely made between both parties to a dispute ordinarily commands a degree of willing acceptance denied to an order imposed on one party by a court decision. A party who settles foregoes the chance of total victory, but avoids the anxiety, risk, uncertainty and expenditure of time which is inherent in almost any contested action, and escapes the danger of total defeat. The law reflects this philosophy, by making it hard for a party to withdraw from a settlement agreement, as from any other agreement, and by giving special standing to an agreement embodied by consent, in an order of the court." See the introduction to Foskett on Compromise (4th edition).*
>
> *89. I would add that settlement does not only serve the private interests of the litigants, but the administration of justice and the public interest more generally, by freeing court resources for other cases. The law therefore encourages and facilitates the mutual resolution of disputes by various means, for very sound reasons of public policy; and there is obviously an important public interest in the finality of settlement."* **ASES1/[38]**

5.2 Solicitors and inhouse media lawyers over the years have told me that, before significant costs are incurred and positions have become entrenched, they would prefer to be called by a solicitor acting on the other side to try and resolve disputes rather than engaging in confrontational inter-solicitor correspondence. This approach benefits both sides. Obviously for claimants, it can resolve a matter quickly and cheaply. For defendants, it will also be cheaper. They also know that it can be hard for a claimant to contend that serious harm has been caused to one's reputation if an online publication is changed after a few hours or days. Also from a defendant's point of view, a change can be made to an online publication without revealing to readers that there was an error or arguable error in the original publication. It is common in my experience for many media disputes to be resolved or attempted to be resolved in this informal way.

5.3 Once again, for the purpose of preparing this statement, I have gone back to a few cases. In a case I did in 2022 my client wanted an article or information in the article urgently removed from the website of a very well-known national newspaper. One of the in-house lawyers at that newspaper, who I know well, has often said to me that he would prefer solicitors to call him up and speak to him and to engage in that way rather than sending letters. I suggested this to my instructing solicitor who, after sending a without prejudice communication requesting a conversation, did in fact call the in-house lawyer on a without prejudice basis. A

follow-up email from the in-house lawyer was also marked 'without prejudice' and indicated that changes would be made to the offending article pending receipt of a formal letter. That resolved the issue.

5.4 In my experience, these communications are considered to be 'without prejudice' and I am not aware of an occasion in which I have been involved where either side has made public the fact or the contents of these discussions. Of course, if the issue is not resolved through that route, the advantage of any discussion or correspondence being 'without prejudice' means it is not seen by the court; that is advantageous for both claimants and defendants. That is why a distinction might be drawn with a letter of claim. In the letter of claim, a complainant would set out the remedies they would seek if the matter gets to court. In 'without prejudice' correspondence, they might reveal that they would likely settle for a great deal less. Defendants are also freer to offer remedies in 'without prejudice' correspondence that they would not necessarily want to appear in a response to a letter of claim.

6. SENIOR POLITICIANS AND DEFAMATION CLAIMS

6.1 I do not recognise the contention that it is rare or even unusual for politicians to bring defamation claims. I know of numerous examples of such claims being brought by what I would consider to be 'senior' politicians and others who I consider less senior. These include the following.

6.1.1 At the start of my career, there were the defamation claims initiated by Neil Hamilton, at the time the Conservative MP for Tatton. In 1994, The Guardian alleged that Mr Hamilton had taken cash payments in exchange for asking questions in Parliament which resulted in Mr Hamilton bringing libel proceedings against The Guardian and against Mohammed Al Fayed.

6.1.2 Albert Reynolds, the former taoiseach of Ireland brought proceedings for defamation against Times Newspapers Ltd in the late 1990s. This resulted in the development of a public interest defence.

6.1.3 George Galloway MP sued the Telegraph in the early 2000s.

6.1.4 In 2011 Dominic Raab MP sued Associated Newspapers. I was junior counsel for the Associated Newspapers.

6.1.5 In 2012 there was 'Plebgate', which resulted in Conservative MP and Chief Whip Andrew Mitchell initiating a libel claim against The Sun which took place in 2014.

6.1.6 In 2018, Charles Elphicke, a former solicitor and MP for Dover, who I acted for, brought proceedings against The Sunday Times for an article containing allegations

of a serious nature. (The claim was discontinued in 2022 following his conviction in 2020.)

6.1.7 Also in 2018 Dan Poulter MP, who I acted for as junior counsel, brought defamation proceedings against Times Newspapers and was successful.

6.1.8 In 2019, I acted for Richard Burgon MP, then Shadow Lord Chancellor in a claim against The Sun which went to trial which he won and was awarded damages.

6.1.9 In 2019, Anna Turley, the former Labour MP, successfully brought proceedings against Unite the Union and Stephen Walker for libel over an article that claimed she acted dishonestly while applying to become a member of the union. I understand Ms Turley was awarded £75,000 in damages.

6.2 I have not heard it said, whether from inhouse media lawyers or others, that it was in some way inappropriate for any politician (whether senior or otherwise) to bring a defamation complaint or that politicians should invariably respond to defamatory allegations solely with some form of public statement. In fact, the House of Lords in 1993 in the seminal case of *Derbyshire County Council v Times Newspapers* held that a local authority was not entitled to maintain an action for libel. Lord Keith expressly stated that it was right not to allow a government body to sue in its own name because of the risk to free speech but it was open to the controlling body to defend itself by public utterances and in debate in the council chambers. Lord Keith also said that the restriction was appropriate because any individual councillor or politician could bring a personal action for defamation, as many have done.

7. WEALTHY CLAIMANTS' PURSUIT OF DAMAGES

7.1 In my experience it is common to see in a letter of claim that the complainant's attitude to damages will be dependent on how quickly the matter is resolved. I have not, throughout my years of practice, any general expectation of how certain clients are expected to behave – it often hinges on the facts of the case, the client's disposition and commercial considerations.

7.2 It follows that it is in my experience highly fact-sensitive whether a wealthy client would forgo the right to seek damages. It was common in the past (when libel trials were heard in front of juries) for wealthy claimants to try to get before the jury that they would pay any damages received to charity. Even now I understand wealthy clients sometimes still do give any damages to charity.

7.3 After Mr Burgon MP (who was not a wealthy man) was successful in obtaining £30,000 in damages from The Sun, in the case referred to in paragraph 6.1.8 above, he announced that he would use the money to fund a paid justice internship for a young person from Leeds.

7.4 I do not recognise the existence of any expectation that politicians or wealthy people in defamation claims behave or should behave differently from anybody else.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: …… Signed by: Adam Speker A3A10E13D30A4FF… ……

Dated: 6 November 2024

ADAM SAMUEL EDWARD SPEKER KC